

The Gazette of India



EXTRAORDINARY

PART II—Section 2

PUBLISHED BY AUTHORITY

No. 9] NEW DELHI, WEDNESDAY, MARCH 16, 1955

RAJYA SABHA

The following report of the Joint Committee of the Houses of the Parliament on the Bill to amend and codify certain parts of the law relating to minority and guardianship among Hindus, was presented to the Rajya Sabha on the 16th March 1955:—

Composition of the Joint Committee

1. Shri H. V. Pataskar—Chairman

Members

RAJYA SABHA

2. Shrimati Pushpalata Das
3. Shri Mahesh Saran
4. Shri T. R. Deogirikar
5. Shri R. U. Agnibhoj
6. Shri S. Venkataraman
7. Sardar Darshan Singh Pheruman
8. Shri T. Pande
9. Shri S. Channa Reddy
10. Shrimati Sharda Bhargava
11. Shri B. P. Basappa Shetty
12. Shri V. Venkataramana
13. Shri S. N. Mazumdar
14. Shri Radhakrishna Biswasroy
15. Shri P. C. Bhanj Deo
16. Shri C. C. Biswas

LOK SABHA

17. Shri Narendra P. Nathwani
18. Shri Moreshwar Dinkar Joshi
19. Shri Badshah Gupta
20. Shri Sohan Lal Dhusiya
21. Shri P. Ramaswamy
22. Shri B. L. Chandak
23. Shri Liladhar Joshi
24. Shri Mathura Prasad Mishra
25. Shri Mahendra Nath Singh
26. Shri Bheekha Bhai
27. Shri Raghubar Dayal Misra
28. Shri M. L. Dwivedy
29. Dr. M. V. Gangadhara Siva
30. Shri C. R. Narasimhan
31. Shri H. Siddananjappa
32. Shrimati Subhadra Joshi
33. Shrimati Ila Palchoudhuri
34. Shri Kanhu Charan Jena
35. Shri Bimalprasad Chaliha
36. Shri Bhola Raut
37. Shri P. R. Kanavade Patil
38. Sardar Hukam Singh
39. Shri S. V. L. Narasimham
40. Shrimati Renu Chakravarthy
41. Shri Anandchand
42. Shri Shankar Shantaram More
43. Shri Jaswantraj Mehta
44. Shri K. S. Raghavachari
45. Shri Bhawani Singh

Shri G. R. Rajagopaul, Joint Secretary and Draftsman to the
Government of India, Ministry of Law

Secretariat

Shri I. Krishna, Under Secretary, Rajya Sabha Secretariat,

REPORT OF THE JOINT COMMITTEE

The Joint Committee to which the Bill* to amend and codify certain parts of the law relating to minority and guardianship among Hindus was referred, have considered the Bill and I now submit their Report with the Bill, as amended by the Committee, annexed thereto.

The Joint Committee held six meetings in all.

Upon the principal changes proposed in the Bill, the Joint Committee observe as follows:—

Clause 2.—The amendments are designed to bring the language of this clause into conformity with the language of clause 2 of the Hindu Marriage Bill as passed by the Rajya Sabha.

Clause 3.—A definition of “guardian” has been inserted in order to make it clear that it includes all kinds of guardians.

Clause 5.—The Joint Committee feel that the mother should ordinarily be entitled to the custody of her child up to five years and have therefore altered three years to five years in sub-clause (a). In sub-clause (b) of the proviso, the Sanskrit equivalents of “hermit”, “ascetic” and “perpetual religious student” are given so that no difficulty is experienced in construing these expressions. Further an *Explanation* has been inserted whereby a step-father and a step-mother are taken out of the purview of this clause.

Clause 6.—The changes are of a drafting nature.

Clause 7.—The Joint Committee feel that as joint-family properties are left out of the scope of the Bill and as natural guardians will deal only with the separate property of minors, it is necessary to place restrictions on the powers of natural guardians with respect to such separate property, and in their opinion the restrictions in the Bill are reasonable. They have, however, omitted sub-clause (2)(b), as its retention may create difficulties in the light of special laws in force in certain States relating to leases of property. In the opinion of the Joint Committee, the omission of sub-clause (2)(b) will not be material in view of the general provisions contained in sub-clause (1).

*Published in the *Gazette of India Extraordinary*, Part II, Section 2, dated the 9th April, 1953.

In sub-clause (3), the Joint Committee have substituted the words "claiming under him" for the words "affected thereby" as in their opinion the latter expression is unnecessarily wide.

The definition of "court" has been slightly modified so as to include a city civil court and also to clarify the position where properties are situate within the jurisdiction of more than one Court.

Clause 8.—This clause has been omitted as unnecessary. The general provisions contained in the Guardians and Wards Act, 1890 and in clause 13 of this Bill afford sufficient guidance to courts with respect to the matters dealt with in this clause.

Clause 8 (old clause 9).—This clause has been completely recast. The father and the mother will now enjoy more or less equal rights with respect to the power to appoint testamentary guardians and it is further provided that where the father appoints a testamentary guardian, the appointment will become ineffective if the mother is alive at the time of the father's death but will revive if the mother dies without making a fresh appointment. The clause also covers cases where a father might have become disentitled to act as a natural guardian for any of the reasons specified in the proviso to clause 5. Provision is also made for the appointment of a testamentary guardian by the mother in the case of illegitimate children.

Clause 9 (old clause 10).—The Joint Committee after careful consideration have come to the conclusion that the guardian of a Hindu minor should bring up the minor in the religion to which the father belonged at the time of the minor's birth, and have modified clause 10 of the original Bill accordingly.

Clause 10 (new).—This clause takes into account the fact that there may be cases where the natural guardian or the testamentary guardian is himself a minor and provides that in such a case he shall not be entitled to act as guardian.

The Joint Committee recommend that the Bill as now amended be passed by the Rajya Sabha.

H. V. PATASKAR,
Chairman of the Joint Committee.

NEW DELHI;

The 10th March, 1955.

MINUTES OF DISSENT

I

Although the Bill as it has emerged from the Joint Committee is much improved to afford the overdue protection to the cause of Hindu minors in our country, there are certain clauses about which I do not agree with the Joint Committee:

Clause 5

There are three points on which I disagree with the majority of the Committee. The first two relate to sub-section (a) and the third to sub-section (b) of Clause 5.

(1) As it is, *de facto* guardians are being done away with according to this Bill. If only father and mother are going to remain as natural guardians, there will be great difficulty in some cases for the minor. The very fact of debarring other relatives from guardianship breaks up the mental effect of social customs and social pressure. As it is, sometimes there will be great difficulty in getting minor children cared for, particularly when there is not much money or property left for them. In such cases it has been the social pressure that played a great part in getting the children looked after. If law itself debars other relatives, it will give them a very good excuse to shirk their responsibility.

On the other hand, it will also have a very bad influence on the minors themselves. A 'minor' is not always a child of three or four or six or seven years, but may be of any age upto eighteen. In fact, the most mouldable and troublesome years—say from eight to seventeen or eighteen—will certainly be adversely affected by the knowledge that nobody has any legal right to guide him except his father and mother. After their death, should that happen, the minor will either feel absolutely lost and forsaken or feel the implications of a very unwholesome freedom; neither of these conditions is desirable.

I would, therefore, suggest that the paternal and maternal grandparents, paternal and maternal uncles and adult elder brothers should also be recognised as natural guardians. This would eliminate the effect of the mentally hurt feeling on the part of the minor's nearest relatives, who in the natural course of things would be his well-wishers and also bear the force of legislation, as far as their status and responsibility is concerned.

(2) The second point on which I do not agree with the Joint Committee is regarding the provision relating to the custody of a minor child with the mother upto the age of five years only. Here,

again, the most critical and character-forming years of the minor child will be very harmfully affected when he knows that his mother has no legal control over him. It will also cause the mother, who, after all, will always have the welfare of the child at heart, untold anxiety and misery. It is also a very untenable position for her that she has no ultimate authority under the law. What a strange position is this!

I would strongly recommend that the mother should have the right of guardianship of the minor till the child attains majority.

(3) The third point of disagreement is that there should be a provision to prevent anybody from staging a come-back to natural guardianship of a minor, once they have ceased as such under sub-clauses (a) and (b) of the proviso.

If either of the parents or any other guardian renounces the world for some years and then comes back, there should be some binding on him or guarantee taken from him, if he wishes to assume guardianship again, so that he does not go off again, as the spirit moves him. Secondly, in such cases the minor, if he has attained certain discretionary age of, say between eight to seventeen or eighteen, should have some say as to whether he wishes to return to the guardianship of the person who renounced him and the world or not.

In fact, on the whole question of vested guardianship—by testament or so forth—wherever practicable, the minor himself should be able to have a say in the matter and there should be some provision in this Bill to this effect—"Only the wearer knows where the shoe pinches"—and how miserable a minor can be made, in uncongenial conditions, can easily be imagined.

ILA PALCHOUDHURI.

NEW DELHI;
The 10th March, 1955.

II

The Bill has been materially improved by the Select Committee. But there are still some points on which I disagree with the majority decision and hence I am writing this Minute of Dissent.

Clause 1

This clause unnecessarily excludes the State of Jammu & Kashmir. Shri C. C. Biswas contended, when he spoke in the Rajya Sabha on the 25th August, 1954, "unfortunately we cannot place Jammu & Kashmir, so far as the legislative jurisdiction of this Parliament is concerned, on the same footing as other parts of the country, because if you see the integration order under which Jammu

and Kashmir became part of India, you will find that lists II and III of the Constitution have been expressly excluded, we cannot have legislative jurisdiction over Jammu and Kashmir in the same way as we can have over other parts of India."

It is difficult for me to accept this contention. I hold the view that Parliament can have legislative jurisdiction over Jammu and Kashmir. I am strengthened in this view by a piece of recent legislation passed by both the Houses. The Imports and Exports (Control) Act, 1947 (Act No. XVIII of 1947) by clause 1(2) excluded the State of Jammu and Kashmir from its operation. This measure, which was to terminate on the 31st March, 1955, has been now extended by the Imports and Exports (Control) Amendment Bill, 1955 (Bill No. XXIV of 1954). Clause 2(a) of this Bill makes the new measure applicable to the State of Jammu and Kashmir also. This Government measure demolishes the contention by Shri C. C. Biswas that the Parliament has no legislative jurisdiction over Jammu and Kashmir.

Sub-clause (2) appears to be not clearly worded. The words "applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories" are far from happy. Clarity demands that these words be replaced by "applies also to Hindus of Indian domicile or origin residing outside India".

Clause 2

Sub-clause (1) is too cumbersome and unnecessarily elaborate. Instead of having such a definition, which is both inclusive and exclusive, we can only mention the religions and persons to whom the Act will not be applicable. Accordingly, the sub-clause may run as under:

"This Act applies to every person of Indian domicile who is not a Muslim, Christian, Parsi or Jew by religion unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed."

Explanation will have to be retained but with two modifications—

- (i) the words in sub-clause (ii) "and who is brought up as a member.....to which such parent belongs or belonged", should be deleted as these words lay down a thing which will be well nigh impossible to prove.
- (ii) the words "or re-convert" in sub-clause (iii) are not necessary.

Clause 5

In my opinion this clause requires several modifications as suggested below:—

- (a) the list of natural guardians should be expanded by including grand-parents, uncles, etc.;
- (b) the custody of a boy should ordinarily be with the mother till he attains the age of 10 years;
- (c) girls, whether married or unmarried, should ordinarily be in the custody of the mother till they attain puberty;
- (d) no natural guardian should be disqualified by mere change of religion;
- (e) sub-clause (b) of the proviso should be amended to read as follows, "if he or she has renounced the world".

Clause 7

I feel that sub-clauses (2), (3) and (4) will lead to many complications which will do great harm to the interest of the minor. The necessity to secure "previous permission of the court" will add to the volume of work of the court, entail expenses and cause delay. The permission given by court will give some foundation to the assumption that the transaction effected was for the benefit of the minor who, when challenging the same, will have to prove that it was not to his benefit and the court granting the permission was misled by the guardian. This onus, in most of the cases, will be difficult to discharge. The present position according to which a guardian can alienate property of the minor for legal necessity or for the benefit of the minor is much more desirable and it protects the interest of the minor better than the change proposed in the Bill.

Sub-clause (2) necessitates "permission of the court" for alienating only "immovable" property. If this change is to be retained then it is difficult to understand why it should not be extended to movable valuables by suitable amendment.

Clause 9 (old clause 10)

I am opposed to clause 9 (old clause 10) as it emphasises the "religion" aspect rather than the "material welfare" of the minor and therefore conflicts with the "paramount consideration" laid down by clause 13. A welfare State, posing to be secular, must insist that a minor should be brought up in a manner which will make him a good, efficient and healthy citizen. I would therefore

suggest that this clause should be replaced by the following, namely:—

"It shall be the duty of a guardian of a minor to look to his support, health and education, and such other matters as the law to which the minor is subject requires."

S. S. MORE.

NEW DELHI;

The 10th March, 1955.

III

The Select Committee has improved upon the Bill to a great extent. The discrimination between the father and the mother in the matter of the appointment of a testamentary guardian has been done away with. Now the mother and the father will enjoy more or less equal rights in this matter. This is a welcome change quite in keeping with the spirit of the Bill. But in our opinion some other changes in the draft Bill were necessary but as the majority of the Committee did not agree with these views, hence this minute of dissent.

Clause 5

1. Sub-clause (a).—The Bill provides that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother. But in our opinion the age limit should be raised to twelve because we hold that for the proper and healthy development of a child a mother's care and guidance upto that age is necessary.

2. Sub-clause (a) of the proviso (page 3, line 16) should be omitted. It provides for an *ipso facto* cessation of guardianship of the person ceasing to be a Hindu. But in a secular State this disqualification for guardianship simply on the ground of change of religion should not be introduced. Even in the Hindu Marriage Bill change of religion by a party to the marriage is not made the ground of any automatic dissolution or nullification of the marriage. There it is left to the will of the other party to sue for divorce or not.

Clause 9

3. Clause 9 should be omitted as nothing is lost thereby, because the relevant section of the Guardians and Wards Act continues to be in force.

NEW DELHI;

March 10, 1955.

RENU CHAKRAVARTTY.

S. N. MAZUMDAR.

IV

I should like to observe that the Bill, as it now emerges, leaves a void so far as the question of providing a natural guardian for

some important categories of minors are concerned. These categories include (1) children of minor fathers, in cases where the father would, according to the scheme of the Bill, be the natural guardian if he were not a minor, (2) children of minor mothers, in cases in which the mother would likewise be the natural guardian but for her minority, (3) married girls with minor husbands, and (4) minor widows. The census figures of persons falling under all these categories will almost be staggering, particularly in the rural areas; and any decrease in their numbers is bound to be gradual, for the simple reason that the age-old social customs and habits die hard. Some of these categories, though not all, were referred to in the discussion before the Joint Committee; but it was suggested by some of the members that the question of giving them protection should be dropped on the ground that if we acted otherwise we might create the impression of giving indirect recognition to marriages of minors, which we are now seeking to penalise under the Hindu Marriage Bill—which has already been passed by the Rajya Sabha and is expected to come up before the Lok Sabha shortly. I strongly feel that this approach to the question is more sentimental rather than realistic, and fails to take into adequate consideration the dictates of justice as well as the numbers to be deprived of the protection of natural guardians. It is to be borne in mind that under the proposed Hindu Marriage Bill we do not seek to *invalidate* marriages of minors, much less to affect the legitimacy of children born of such marriages. None of the persons included in the categories enumerated above could be deemed to be responsible for such marriages, of which they may be products; and the State cannot and should not, consistently with justice and equity and the ideal of a Welfare State, refuse them the protection they need so much for the acts of commission and omission of others. I humbly submit that the discrimination sought to be made here between minors falling under the categories I have enumerated and other minors, will be repugnant to the Constitution which guarantees equality before the law or equal protection of the laws to all persons equally placed.

NEW DELHI;
The 11th March, 1955.

JASWANTRAJ MEHTA.

V

I wish to send this minute of dissent to the Report.

Clause 5

The provision contained in Clause 5 of this Bill leaves a minor married but widowed girl without a natural guardian. Her father or mother are incompetent to be her natural guardian as she is not an unmarried girl. Marriages of minor girls are permissible

under the law. Unfortunately some of them are widowed even in their minority. Under the proposed legislation only a father or a mother can be a natural guardian.

This lacuna can be rectified by adding the phrase 'or a married but widowed' after the words 'unmarried girl' in sub-clauses (a) and (b) of clause 5.

NEW DELHI;

K. S. RAGHAVACHARI.

The 11th March, 1955.

THE HINDU MINORITY AND GUARDIANSHIP BILL, 1955

(AS AMENDED BY THE JOINT COMMITTEE)

(Words side-lined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions)

A

BILL

to amend and codify certain parts of the law relating to minority and guardianship among Hindus.

Be it enacted by Parliament in the Sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Hindu Minority and Guardianship Act, 1955. Short title and extent

(2) It extends to the whole of India except the State of Jammu and Kashmir and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories.

2. (1) This Act applies—

Application of Act.

(a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,

(b) to any person who is a Buddhist, Jaina or Sikh by religion, and

(c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters for which provision is made herein if this Act had not been passed.

Explanation.—The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:—

- (i) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;
- (ii) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and
- (iii) any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) The expression 'Hindu' in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

Definitions

3. In this Act—

- (a) "minor" means a person who has not completed the age of eighteen years;
- (b) "guardian" means a person having the care of the person of a minor or of his property or of both his person and property, and includes—
 - (i) a natural guardian, or
 - (ii) a guardian appointed by the will of the minor's father or mother, or
 - (iii) a guardian appointed or declared by a court, or
 - (iv) a person empowered to act as such by or under any enactment relating to any court of wards;
- (c) "natural guardian" means any of the guardians mentioned in section 5.

Over-riding effect of Act.

4. Save as otherwise expressly provided in this Act—

- (a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions made in this Act.

5. The natural guardians of a Hindu minor, in respect of the Natural minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are—
of a Hindu minor.

(a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(b) in the case of an illegitimate boy or an illegitimate unmarried girl—the mother and after her, the father;

(c) in the case of a married girl—the husband:

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—

(a) if he has ceased to be a Hindu, or

(b) if he has completely and finally renounced the world by becoming a hermit (*vanaprastha*) or an ascetic (*yati* or *sanyasi*) or a perpetual religious student (*naishthika brahmachari*).

Explanation.—In this section, the expressions 'father' and 'mother' do not include a step-father and a step-mother.

6. The natural guardianship of an adopted son who is a minor passes, on adoption, to the adoptive father and after him to the adoptive mother.

7. (1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the Court, *mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him.

(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in case of necessity or for an evident advantage to the minor.

(5) The Guardians and Wards Act, 1890, shall apply to and in VIII of 1890 respect of an application for obtaining the permission of the court under sub-section (2) in all respects as if it were an application for obtaining the permission of the court under section 29 of that Act, and in particular—

(a) proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of section 4A thereof;

(b) the court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of section 31 of that Act; and

(c) an appeal shall lie * * * * from an order of the court refusing permission to the natural guardian to do any of the acts mentioned in sub-section (2) of this section to the court to which appeals ordinarily lie from the decisions of that court.

(6) In this section, "court" means the city civil court or a district court or a court empowered under section 4A of the Guardians and Wards Act, 1890, within the local limits of whose jurisdiction the immovable property in respect of which the application is made * * * is situate, and where the immovable property is situate within the jurisdiction of more than one such court, means the court within the local limits of whose jurisdiction the greater portion of the property is situate.

* * * * *

Testamentary guardians and their powers.

8. (1) A Hindu father entitled to act as the natural guardian of his minor legitimate children may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property (other than the undivided interest referred to in section 12) or in respect of both.

(2) An appointment made under sub-section (1) shall have no effect if the father predeceases the mother, but shall revive if the mother dies without appointing, by will, any person as guardian.

(3) A Hindu widow entitled to act as the natural guardian of her minor legitimate children, and a Hindu mother entitled to act as the natural guardian of her minor legitimate children by reason of the fact that the father has become disentitled to act as such, may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property (other than the undivided interest referred to in section 12) or in respect of both.

(4) A Hindu mother entitled to act as the natural guardian of her minor illegitimate children may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property or in respect of both.

(5) The guardian so appointed by will has the right to act as the minor's guardian after the death of the minor's father or mother, as the case may be, and to exercise all the rights of a natural guardian under this Act to such extent and subject to such restrictions, if any, as are specified in this Act and in the will.

(6) The right of the guardian so appointed by will shall, where the minor is a girl, cease on her marriage.

9. It shall be the duty of the guardian of a Hindu minor to bring up the minor in the religion to which the father belonged at the time of the minor's birth and, in the case of an illegitimate child, in the religion to which the mother belonged at the time of the minor's birth.

10. A minor shall be incompetent to act as guardian of the property of any minor.

11. After the commencement of this Act, no person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the *de facto* guardian of the minor.

12. Where a minor has an undivided interest in joint family property and the property is under the management of an adult member of the family, no guardian shall be appointed for the minor in respect of such undivided interest:

Provided that nothing in this section shall be deemed to affect the jurisdiction of a High Court to appoint a guardian in respect of such interest.

13. In the appointment or declaration of any person as guardian of a Hindu minor by a Court, the welfare of the minor shall be the paramount consideration and no person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the Court is of opinion that his or her guardianship will not be for the welfare of the minor.

S. N. MUKERJEE,
Secretary.

